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6 Attorneys for United States of America

7 UNITED STATES DISTRICT COURT
8 SOUTHERN DISTRICT OF CALIFORNIA
9

10 UNITED STATES OF AMERICA) No. 16CR1409-H
)
11 Plaintiff,) JOINT MOTION TO (1) CONTINUE
) MOTION HEARING AND (2) EXCLUDE
12 v.) TIME UNDER THE SPEEDY TRIAL ACT
)
13 HOOTAN MELAMED (1),) Date: July 25, 2016
14 JEAN FRANCOIS PICARD (2),) Time: 2:00 p.m.
15 JOHN PANGELINAN (3),)
PHONG H,UNG TRAN (4),)
16 JONATHAN PENA (5),)
)
17 Defendants.)

18 The parties jointly move to continue the motion hearing
19 currently set for July 25, 2016 at 2:00 p.m. to October 24, 2016
20 at 2:00 p.m., and to exclude time under the Speedy Trial Act
21 pursuant to 18 U.S.C. § 3161(h)(7). In support, the parties
22 submit as follows:

23 1. On June 16, 2016, a federal grand jury returned a 14-
24 count indictment charging the defendants with conspiracy, honest
25 services mail fraud, violations of the Travel Act, and criminal
26 forfeiture, in connection with an alleged \$34 million kickback
27 and bribery scheme through which service providers paid bribes
28

1 and kickbacks to doctors to write prescriptions for compound
2 creams or make referrals for durable medical equipment, and then
3 to submit them to specific pharmacies and companies to be
4 filled.

5 2. The defendants made their initial appearances and were
6 arraigned on the indictment in the Southern District of
7 California on June 28, 2016. The Speedy Trial Act, 18 U.S.C.
8 § 3161(c)(1), requires trial to commence within 70 days from
9 that date. Section 3161(h) excludes certain periods of time in
10 calculating the 70 days, including delay resulting from a
11 continuance if the court finds "the ends of justice served by
12 taking such action outweigh the best interest of the public and
13 the defendant in a speedy trial." 18 U.S.C. § 3161(h)(7)(A). The
14 court must "set[] forth . . . either orally or in writing, its
15 reasons" for the finding. Id. The court "shall consider" the
16 following factors, "among others":

17 (i) Whether the failure to grant such a continuance
18 in the proceeding would be likely to make a
19 continuation of such proceeding impossible, or result
20 in a miscarriage of justice.

21 (ii) Whether the case is so unusual or so complex,
22 due to the number of defendants, the nature of the
23 prosecution, or the existence of novel questions of
24 fact or law, that it is unreasonable to expect
25 adequate preparation for pretrial proceedings or for
26 the trial itself within the time limits established
27 by this section.

28 . . .

 (iv) Whether the failure to grant such a
continuation in a case which, taken as a whole, is not
so unusual or so complex as to fall within clause
(ii), would deny the defendant reasonable time to
obtain counsel, would unreasonably deny the defendant
or the Government continuity of counsel, or would

1 deny counsel for the defendant or the attorney for
2 the Government the reasonable time necessary for
3 effective preparation, taking into account the
4 existence of due diligence.

5 U.S.C. § 3161(h)(7)(B). "No continuance under [this provision]
6 shall be granted because of general congestion of the court's
7 calendar, or lack of diligent preparation or failure to obtain
8 available witnesses on the part of the attorney for the
9 Government." U.S.C. § 3161(h)(7)(C).

10 3. The parties agree that the ends of justice served by
11 granting the requested continuance outweigh the best interest of
12 the public and the defendants in a speedy trial, for the
13 following reasons:

14 a. According to the indictment, the alleged scheme
15 involved years' worth of medical treatments, millions of
16 dollars in bills, thousands of dollars in corrupt payments,
17 and hundreds of patients. There are dozens of recordings
18 to review, ranging in length from a few minutes to an hour
19 or more. The discovery also includes thousands of pages of
20 insurance claim files and bank records.

21 b. Because the claims involve patient identities,
22 medical treatment, and billing records, the discovery in
23 this case is sensitive. The parties on July 8, 2016
24 jointly sought a protective order from the Court protecting
25 access to the discovery. No discovery has yet been
26 provided, pending the Court's consideration of the motion
27 for the Protective Order. That Order was just signed on
28 July 18, 2016.

1 c. The United States has made arrangements for defense
2 counsel to receive and review the discovery in a convenient
3 manner, by offering to load hard drives with the discovery
4 and send those directly to defense counsel. But the
5 process of formatting and loading each hard drive takes
6 some time, which will need to be repeated for the five
7 defense counsel. The United States has so far received
8 hard drives from two of the five defense counsel.

9 d. Given the volume of discovery and the need to
10 protect and limit its disclosure, the defense needs time to
11 obtain the material and review it before they can file and
12 litigate pretrial motions and provide an estimate of trial
13 length.

14 4. Accordingly, the parties request a continuance of the
15 motion hearing until October 24, 2016.

16 5. The parties have exercised due diligence. The parties
17 submit that the amount of discovery and the nature of the
18 charges make it unreasonable to expect adequate preparation for
19 pretrial proceedings or the trial itself within the time limits
20 established by the Speedy Trial Act. The parties further submit
21 that the failure to grant the requested continuance would deny
22 counsel the reasonable time necessary for effective preparation
23 and result in a miscarriage of justice.

24 6. Defendants are all currently out of custody.

25 7. Counsel for defendants represent that they have
26 discussed the need for this continuance with their respective
27
28

1 clients, and that each defendant agrees to and joins in the
2 request for this continuance.

3 8. The parties therefore jointly move for a continuance
4 and to exclude time under the Speedy Trial Act. The parties
5 agree the period of delay excluded spans from the filing of this
6 joint motion until the new date for the hearing pursuant to
7 U.S.C. § 3161(h)(1)(D) and (h)(7)(A); specifically, that the
8 time between July 19, 2016 and October 24, 2016 shall be
9 excluded.

10 DATED: July 19, 2016 Respectfully submitted,

11
12 LAURA E. DUFFY
13 United States Attorney
14 s/ Valerie H. Chu
15 VALERIE H. CHU
16 Assistant United States Attorney

17 s/Steven Goldsobel (w/authorization)
18 STEVEN GOLDSOBEL
19 Counsel for Hootan Melamed (Def 1)

20 s/Gerald Werksman (w/authorization)
21 GERALD WERKSMAN
22 Counsel for Jean Picard (Def 2)

23 s/Patrick Q. Hall (w/authorization)
24 PATRICK Q. HALL
25 Counsel for John Pangelinan(Def 3)

26 s/Thomas Warwick (w/authorization)
27 THOMAS WARWICK
28 Counsel for Phong Tran (Def 4)

s/Gretchen von Helms (w/authorization)
GRETCHEN VON HELMS
Counsel for Jonathan Pena (Def 5)

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4 UNITED STATES DISTRICT COURT
5 SOUTHERN DISTRICT OF CALIFORNIA

6 UNITED STATES OF AMERICA) No. 16cr1409-H
7)
8 Plaintiff,) CERTIFICATE OF SERVICE
9)
10 v.)
11)
12 HOOTAN MELAMED (1),)
JEAN FRANCOIS PICARD (2),)
11 JOHN PANGELINAN (3),)
PHONG HUNG TRAN (4),)
12 JONATHAN PENA (5),)
13)
14 Defendants.)
15

16 IT IS HEREBY CERTIFIED THAT:

17 I, Valerie H Chu, am a citizen of the United States and am
18 at least 18 years of age. My business address is 880 Front
Street, San Diego, California 92101-8893.

19 I am not a party to this case. I have caused service of
20 the attached Joint Motion on the parties to this case by filing
the foregoing with the Clerk of the District Court using its ECF
system, which electronically notifies them.

21 I declare under penalty of perjury that the foregoing is
22 true and correct.

23 Executed on July 19, 2016

24 s/ Valerie H. Chu
25 VALERIE H. CHU
26
27
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